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In the Supreme Court of the United States

OCTOBER TERM, 1976

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

JOHN A. JOBST

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLANT

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BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the district court on remand (J.S. App. A, pp. 1a-4a) is not reported. The earlier opinion of the district court (J.S. App. B, pp. 5a-17a) is reported at 368 F. Supp. 909.

JURISDICTION

The judgment of the district court, reinstating the earlier judgment declaring Sections 202(d)(1)(D)

and 202(d)(5) of the Social Security Act unconstitutional as applied to appellee, was entered on July 27, 1976 (J.S. App. E, p. 23a). A notice of appeal to this Court was filed on August 24, 1976 (J.S. App. C, pp. 18a-19a). On October 13, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including November 22, 1976, and on November 15, 1976, he further extended the time to and including December 22, 1976. The jurisdictional statement was filed on the latter date, and probable jurisdiction was noted on February 22, 1977 (App. 17).

QUESTION PRESENTED

Whether Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Social Security Act, which provide that secondary social security benefits received by a disabled dependent child of an insured wage earner shall terminate when the child marries an individual who is not entitled to benefits under the Act, are consistent with the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402, provides in pertinent part:

(d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

* * * * *

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies or marries,

* * * * *

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; * * *.

* * * * *

(s)(2) * * * [S]o much of subsection[] * * * (d)(5) * * * of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability * * *.

STATEMENT

1. Under Section 202(d) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402(d), child's insurance benefits are provided to the dependent children of wage earners who receive old-age or disability benefits or who have died fully or currently insured under the Act. To be entitled to child's insurance benefits, the dependent child at the time of his application must be unmarried and either under 18 years of age (or a full-time student under age 22) or under a disability which began before he attained age 22. Section 202(d)(1)(B) of the Act.

Section 202(d)(1)(D) of the Act provides that child's insurance benefits shall terminate when the child marries. There is, however, a limited exception to this general provision for a disabled child (who has attained the age of 18) who marries an individual also entitled to one of several categories

of insurance benefits under the Act. Sections 202(d)(5) and 202(s)(2) of the Act.[1] Such a marriage does not terminate the disabled child's entitlement to benefits. Section 202(d)(5). But a disabled child who marries an individual who is not entitled to benefits under the Act falls outside the exception; that disabled child's benefits, like those of nondisabled children, are terminated by marriage.

2. Appelle John A. Jobst, who has been disabled since birth from cerebral palsy, was awarded child's insurance benefits in 1957, at age 25, upon the death of his father, who had been an insured wage earner under the Act (Tr. 61).[2] In 1970 appellee married a person who likewise suffered from cerebral palsy but who was not entitled to child's insurance or any other form of benefit under Title II of the Act (Tr. 36, 37). Because of this marriage, appellee's child's insurance benefits were terminated by the Secretary pursuant to Section 202(d)(1)(D) of the Act (Tr. 7; see Tr. 63).

After exhausting his administrative remedies, appellee instituted this action in the United States District Court for the Western District of Missouri to review the Secretary's termination of his benefits.

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[1] Section 202(d)(5) on its face appears to state a general rule applicable to all dependent children, but Section 202(s)(2) narrows the application of that rule to dependent children who are disabled.

[2] "Tr." refers to the transcript of the administrative proceedings relating to appellee's claim for benefits. The relevant facts of this case are not in dispute.

On January 14, 1974, the district court held that Section 202(d)(1)(D), which provides generally that eligibility for child's insurance terminates upon marriage, and Section 202(d)(5), which provides a limited exception from that provision in favor of disabled child's insurance beneficiaries who marry other beneficiaries under Title II of the Act, are unconstiutional "as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits" (J.S. App. B, p. 17a). The court reasoned that these statutory provisions violated the equal protection principles that inhere in the Due Process Clause of the Fifth Amendment because there was "[n]o rational basis" for the statutorily created "distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits" (J.S. App. B, p. 13a). The court declared the statutory provisions unconstitutional and remanded the case to the Secretary "with the * * * direction that [appellee's] claim be allowed" (J.S. App. B, p. 17a).

3. The Secretary appealed directly to this Court (No. 73-1758). The jurisdictional statement pointed out (pp. 7-8) that since January 1, 1974, appellee and his wife had been receiving a monthly benefit of $210 under the newly enacted program of Supplemental Security Income for the Aged, Blind, and Disabled, Title XVI of the Social Security Act, as added by the Social Security Amendments of 1972, 86 Stat. 1329, 42 U.S.C. (Supp. V) 1381 *et seq.*, and that that amount was only approximately $20 per

month less than the combined amount appellee and his wife would have received under both the child's insurance and the supplemental security income provisions of the Act had appellee remained entitled to child's insurance benefits. The change in appellee's circumstances caused by the enactment of the supplemental security income program was not a part of the record before the district court when it had rendered its decision. On October 15, 1974, this Court vacated the judgment of the district court and remanded the case for reconsideration in light of the new program. 419 U.S. 811-812.

On remand, the district court held that the supplemental security income program "simply had nothing to do with the questions presented" in this case (J.S. App. A, p. 3a). The court therefore reinstated its original judgment of January 14, 1974, holding Sections 202(d)(1)(D) and 202(d)(5) unconstitutional as applied (J.S. App. A, p. 4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

Title II of the Social Security Act establishes a program of social insurance under which covered wage earners and their families receive protection against the economic consequences of the wage earners' old age, disability, and death. Primary insurance benefits are payable to the aged or disabled wage earner, and several other categories of benefits ("secondary" benefits) are payable to other individuals on the basis of their relationship to the wage earner. Secondary insurance benefits at pres-

ent are payable under specified conditions to the wage earner's spouse or surviving spouse, his children, and his parents. Section 202(b), (c), (d), (e), (f), (g), and (h) of the Act. The question in this case concerns the constitutionality of the provisions of Section 202(d) under which the child of an eligible wage earner loses entitlement to secondary insurance benefits when he or she marries, unless the child is disabled and marries an individual who also is eligible to receive insurance benefits under Title II of the Act.

The statutory provisions governing the payment of child's insurance benefits, like the provision governing payment of benefits to divorced wives that was sustained by this Court in *Mathews* v. *de Castro*, No. 75-1197, decided December 13, 1976, are the product of a step-by-step legislative process that has given shape and content to the nation's evolving social welfare scheme. The history of these provisions illustrate that, particularly in the allocation of secondary benefits, as the nation has developed economically, and as prevailing views have shifted with respect to the extent of the government's responsibility for the individual's economic well-being, Congress has gradually but steadily added to the categories of eligible beneficiaries. In responding to changing social conditions and priorities by enlarging the coverage of the Social Security Act, Congress has acted in the time-honored tradition of legislative reform by moving one step at a time to address "the phase of the problem which seems most

acute to the legislative mind." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

When the Social Security Act was first enacted, only the wage earner himself was entitled to benefits. 49 Stat. 623. In 1939, benefits were extended to members of the wage earner's immediate family, including unmarried children under the age of 18. 53 Stat. 1364. Later, benefits were further extended to unmarried disabled children over the age of 18. 70 Stat. 807. Initially, the benefits of all such children terminated upon marriage. See 53 Stat. 1364; 70 Stat. 807. But in 1958 Congress provided for the continuation of the insurance benefits of disabled children when they marry other individuals entitled to insurance benefits under the Act. 72 Stat. 1030. See Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Act.

In this case, the district court found that the 1958 amendment rendered the statutory scheme unconstitutional with respect to certain individuals who had not been affected by that amendment: the court held that the exception thereby made to the general rule, that benefits terminate upon marriage, was unconstitutionally narrow, and that the exception must be enlarged to satisfy the requirements of due process. The court reasoned that the 1958 amendment created a distinction "between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits," a distinction for which the court could perceive "[n]o rational basis" (J.S. App. B, p. 13a).

We show below that the general rule terminating child's insurance benefits upon marriage is reasonable (pp. 13-22, *infra*) and that the narrowness of the exception to that general rule also is rationally based (pp. 22-27, *infra*). *A fortiori*, the termination of appellee's benefits upon marriage was reasonable. Due process demands no more. Like the statute under consideration in *Mathews* v. *de Castro*, *supra*, the statutes here "[are] entitled to a strong presumption of constitutionality" (slip op. 5). Since the challenged classification is not "suspect" and does not bear upon a fundamental constitutional interest, "[i]f the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment." *Richardson* v. *Belcher*, 404 U.S. 78, 84. Ordinary social welfare classifications, such as the one challenged here, satisfy the requirements of equal protection and due process unless " 'the statute * * * [is] utterly lacking in rational justification.' " *Weinberger* v. *Salfi*, 422 U.S. 749, 768. See also *Mathews* v. *Lucas*, 427 U.S. 495; *Mathews* v. *de Castro*, *supra*. The statutory provisions at issue in this case are constitutional under that test.

A. Child's insurance benefits were established generally "to afford more adequate protection to the family as a unit" (H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939)), and in particular to replace the support lost by the wage earner's dependent children as a consequence of his death, disability, or

retirement. A child's marriage, however, normally significantly lessens or terminates the relationship of dependency between the child and his economic parent, a relationship that "is the critical factor" (*Califano* v. *Goldfarb*, No. 76-699, decided March 2, 1977 (slip op. 13; plurality opinion)) in determining eligibility for secondary insurance benefits. Accordingly, Congress' decision generally that children receiving child's insurance benefits lose their entitlement to such benefits when they marry is reasonable.

Some individual married children may remain needy after their marriage, but the insurance provisions of Title II of the Act were not designed, and as a constitutional matter need not be designed, to identify and meet individualized instances of need. Instead, Congress has enacted the supplemental security income program and other general assistance programs to work in tandem with the insurance program; these newer programs allocate assistance to needy persons who are not covered by the insurance program. Under the supplemental security income program, appellee and his wife have been receiving only marginally less than they would have received had appellee's child's insurance benefits been continued. Congress has thus responded to and provided for the needs of appellee and other similarly situated individuals in an entirely reasonable manner.

B. As part of a set of amendments to the Social Security Act, Congress in 1958 provided for the continuation of child's insurance benefits to disabled children who marry individuals who also are entitled

to benefits under the Act. As the legislative history shows, these amendments were designed to eliminate a particular form of hardship: the termination of or substantial reduction in insurance benefits that was occasioned by the marriage of one insurance beneficiary to another. Appellee's case does not fall within the limited circumstances with which Congress was concerned. Moreover, whereas marriages between insurance beneficiaries are easily identified and treated within the existing structure of Title II, Congress could not have amended Title II to cover the occasional instances of continued need in other marriages without substantially altering the method of allocating benefits under that Title. The Due Process Clause does not require such an alteration and thus it does not require that the narrow exception to the general rule that benefits terminate upon marriage be extended to cover appellee's case.

ARGUMENT

SECTIONS 202(d)(1)(D), 202(d)(5), AND 202(s)(2) OF THE SOCIAL SECURITY ACT, WHICH PROVIDE THAT SECONDARY SOCIAL SECURITY BENEFITS RECEIVED BY A DISABLED DEPENDENT CHILD OF AN INSURED WAGE EARNER SHALL TERMINATE WHEN THE CHILD MARRIES AN INDIVIDUAL WHO IS NOT ENTITLED TO BENEFITS UNDER THE ACT, ARE CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

A. The General Rule that an Individual's Entitlement to Child's Insurance Benefits Terminates Upon Marriage is Rational

When the child's insurance provisions were adopted in 1939, and also when those provisions were expanded in 1956 to include disabled children over the age of 18, there was no exception to the general rule that benefits under those provisions terminate when the child marries. 53 Stat. 1364; 70 Stat. 807. That general rule is reasonable.

1. Child's benefits, like other secondary benefits under the Act, were established "to afford more adequate protection to the family as a unit." H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939). See *Califano* v. *Goldfarb*, No. 75-699, decided March 2, 1977 (slip op. 9, 14; plurality opinion). Congress understood that members of a wage earner's family suffered most from a loss of or reduction in the wage earner's income. The "primary objective" of secondary benefits thus was "to insure covered wage earners and their families against the economic and social impact on the family normally entailed by loss

of the wage earner's income * * *." *Mathews* v. *de Castro*, *supra* (slip op. 5); *Califano* v. *Goldfarb*, *supra* (slip op. 13; plurality opinion).

Benefits were provided to the wage earner's dependent children in order to enhance the family unit's economic well-being and, in particular, to replace the support lost by those children as a consequence of the wage earner's death, disability, or retirement. See *Mathews* v. *Lucas*, *supra*, 427 U.S. at 507. The provision of benefits on the basis of the wage earner's social security account also was viewed as helping to preserve the wage earner's role as provider and to sustain the child's sense of security in the family as a unit. Hearings on the Social Security Amendments of 1939 before the House Committee on Ways and Means, 76th Cong., 1st Sess. 32-33 (1939). Congress determined to continue benefits to older unmarried disabled children in view of the fact that generally such children "are as dependent on their parents after attaining age 18 as before * * *." S. Rep. No. 2133, 84th Cong., 2d Sess. 2 (1956).

Normally, upon marrying, a child departs from "the family as a unit" and establishes a new family. As a general matter, married children are considerably less likely than unmarried ones to be dependent on their parents for the provision of their essential economic needs; they therefore are correspondingly less likely to be significantly affected, in terms of support, by the wage earner's death, disability, or retirement. When an individual marries, moreover,

he is much less likely than when he was a child to look upon his parents as his providers or to require, for a sense of security and well-being, that his parents maintain that role.

In short, in ordinary circumstances a child's marriage significantly reduces or terminates the relationship of dependency that "is the critical factor" (*Califano* v. *Goldfarb*, *supra* (slip op. 13; plurality opinion)) in determining eligibility for secondary insurance benefits. Marriage is an "objective and apparently reasonable indicator[]" (*Mathews* v. *Lucas*, *supra*, 427 U.S. at 516) of the time by which an individual's special need for parental support has ended. Congress reasonably determined that a child who marries removes himself from the class of individuals for whom secondary benefits were principally designed.

Congress therefore provided that a child of a deceased, disabled, or retired wage-earner is eligible to receive child's insurance benefits only if he is unmarried at the time his application for benefits is filed. Section 202(d)(1)(B). For the same reason, Congress provided generally that children receiving child's insurance benefits lose their entitlement to such benefits when they marry. Section 202(d)(1)(D). These classifications are "justified as reasonable empirical judgments that are consistent with a design to qualify entitlement to benefits upon a child's dependency * * *." *Mathews* v. *Lucas*, *supra*, 427 U.S. at 510.

In holding Section 202(d)(1)(D) unconstitutional as applied in the circumstances here, the district

court in essence disapproved of Congress' extrapolation from its general observation of human experience—that marriage normally results in the establishment of a new, self-sufficient household—to a broad bar on the payment of benefits to most married children of the wage earner. The court's analysis rests upon the fact that some beneficiaries, themselves incapable of gainful employment, may "marr[y] * * * person[s] who can not provide a source of support" (J.S. App. B, p. 14a), and that such individuals would in fact remain dependent upon the wage earner, or the secondary benefits payable on his account, for support. Yet a holding of unconstitutionality based upon that particularized concern contravenes the principle, which the court recognized but did not apply, "that a classification may not properly be held to violate equal protection principles because it 'is not made with mathematical nicety or because in practice it results in some inequality'" (J.S. App. B, pp. 12a-13a).

More fundamentally, the district court's holding of unconstitutionality reflects a misunderstanding of the rationale underlying the legislatively chosen method of allocating secondary benefits. The court ruled, in effect, that because appellee married another disabled individual, who in fact was unable to support him, appellee's need continued and therefore, as a constitutional matter, his benefits also must continue. But the existence of need as such is neither a necessary nor a sufficient basis for entitlement to secondary benefits. Title II "is basically a statutory insurance

policy." *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 775. Insurance benefits under Title II are "payable wholly regardless of the need of the recipient." H.R. Rep. No. 615, 74th Cong., 1st Sess. 1 (1935). Concededly, presumed need appropriately has guided Congress in expanding the categories of eligible beneficiaries under this social insurance system; but it has remained a fundamental principle of that system that payments are to be made on the basis of broad statutory classifications without individualized determinations of need.

Individualized determinations of need, moreover, are not required by the Due Process Clause. Congress constitutionally may allocate secondary social security benefits on the basis of an individual's membership in the primary beneficiary's family unit and may deny or terminate benefits when the individual separates from that unit. See *Mathews* v. *de Castro*, *supra*. Furthermore, Congress need not require a case-by-case determination of actual dependency upon the wage earner, but instead may allocate benefits on the basis of broad statutory classifications that reflect the relative likelihood of dependency. *Mathews* v. *Lucas*, *supra*. That is what Congress has done in the case of child's insurance benefits. Such general statutory classifications are "a widely accepted response to legitimate interests in administrative economy and certainty of coverage * * * [and the government] may rely on such [classifications] so long as they comport with * * * standards of legislative reasonableness * * *." *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 776-777.

The constitutional inquiry in this case is similar to that in *Mathews* v. *de Castro*, *supra*, where the Court unanimously upheld the constitutionality of a provision of the Social Security Act governing the eligibility of divorced wives for secondary benefits. Stated generally, the question here and in *de Castro* is the same: whether an individual's separation from the family unit of the wage earner and establishment of a new family unit—in *de Castro*, by a wife's divorce from the wage earner; here, by the marriage of the wage earner's child—is a constitutionally sufficient justification for termination of the benefits to which the individual otherwise would be entitled on the basis of the wage earner's Social Security account. In *de Castro*, the Court began with the premise that Congress' "primary objective was to provide workers and their families with basic protection against hardships created by the loss of earnings" (slip op. 5). The Court therefore characterized as "hardly in point" (slip op. 6) the argument that many divorced wives are economically needy; instead, it stressed the impact that divorce has on the former wife's relationship to the wage earner's family unit. The Court upheld the statutory provision on the ground that "Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married" (slip op. 8).

The same analysis applies here. Congress has determined that it is probable that a child's marriage marks a point by which the child's economic de-

pendency upon his parents has become significantly lessened if not terminated altogether. This determination is amply supported by common exerience and is reasonable. The assumption that married individuals are no longer substantially dependent upon their parents for essential economic support, "though [it] may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, [is] permissible under the Fifth Amendment * * *." *Mathews* v. *Lucas*, *supra*, 427 U.S. at 509. See also *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 768-769. Congress further determined that this probability of a significant reduction in dependency warrants termination of the child's secondary benefits upon marriage.[3] Such categorical assumptions about dependency and need conduce to the efficient administration of the program and afford a constitutionally permissible basis upon which to allocate secondary social security benefits. *Mathews* v. *de Castro*, *supra*; *Mathews* v. *Lucas*, *supra*.

2. Because of his marriage, appellee no longer is entitled to secondary insurance benefits. But Congress has enacted a supplemental security income program for aged, blind, and disabled individuals, Title XVI of the Social Security Act, 42 U.S.C. (Supp. V) 1381 *et seq.*, under which appellee and his wife have been receiving only approximately $20 per month less than the combined amount they would have received in both child's insurance bene-

[3] Congress made a similar determination with respect to age: except for disabled children, benefits terminate when the child reaches age 18 or, in the case of a student, age 22.

fits and supplemental security income had appellee's child's insurance benefits not been terminated (App. 13-14). Thus, although appellee has lost his entitlement to secondary benefits under Title II of the Act, Congress has provided substantial relief under another benefit program.

On remand, the district court held that the supplemental security income program "simply ha[s] nothing to do with the questions presented" in this case (J.S. App. A, p. 3a). We believe that the child's insurance provisions challenged here may be sustained as constitutional without reference to the existence of the supplemental security income program. But, contrary to the district court's holding, Title XVI does bear upon the issues presented here, for it underscores the reasonableness of the allocation of secondary social security benefits.

At bottom, the district court's principal concern in this case was that some disabled child's insurance beneficiaries whose benefits were discontinued upon marriage would be needy (see J.S. App. B, p. 14a). But the statutory method of allocating secondary insurance benefits is not designed, and as a constitutional matter need not be designed, to identify and meet individualized instances of need: Congress did not intend Title II to have such a purpose (*Mathews* v. *de Castro, supra* (slip op. 5-6 n. 6)), and the alterations in Title II that would be necessary to accomplish that purpose are not constitutionally required (see, *e.g.*, *Mathews* v. *de Castro, supra; Mathews* v. *Lucas, supra; Weinberger* v. *Salfi, supra*).

In contrast, benefits under Title XVI are provided to aged, blind, and disabled individuals whose income and other resources are below prescribed levels. Section 1611 of the Act, 42 U.S.C. (Supp. V) 1382. Thus, unlike the secondary benefits provisions of Title II, Title XVI is designed explicitly to allocate assistance on the basis of individualized determinations of need.

Congress intended that the supplemental security income program and other general assistance programs established under the Social Security Act would work in tandem with the insurance provisions of Title II. Whereas the latter provisions extend coverage to the wage earner and his family without regard to need, the former programs provide benefits on the basis of actual need to individuals who "[have] unusual needs, or * * * who [are] in need for reasons not covered by the insurance program, or * * * who for one reason or another [are] unable to earn insurance rights through work." Recommendations for Social Security Legislation, Report of the Advisory Council on Social Security, S. Doc. No. 208, 80th Cong., 2d Sess. 95 (1948); see H.R. Rep. No. 1300, 81st Cong., 1st Sess. 53-54 (1949). Congress intended that the general assistance programs would "serve the function of filling the gaps left by the social insurance program * * *." H.R. Rep. No. 1189, 84th Cong., 1st Sess. 4 (1955).

Congress' intention has been realized in this case. Appellee's child's insurance benefits under Title II

were discontinued, because he could fairly be presumed to have left the wage earner's "family as a unit," yet he remained needy "for reasons not covered by the insurance program." Because he remained needy, he became entitled to supplemental security income under Title XVI. Indeed, the income appellee and his wife receive under that Title is only marignally less than they would have received had appellee's child's insurance benefits been continued. Thus the mere fact that appellee remained needy after his marriage is not a constitutionally sufficient reason for requiring Congress to continue his child's insurance benefits. Congress has responded to and provided for the needs of appellee and other similarly situated individuals in a different but entirely reasonable manner.

B. The Narrow Exception for Disabled Children who Marry Individuals Entitled to Insurance Benefits Under the Act also is Rational

Congress has provided disabled children with a limited exception to the general rule that marriage causes a termination of child's insurance benefits. See Sections 202(d)(5) and 202(s)(2). That exception was enacted in 1958 as part of a set of amendments providing for continuation of most secondary benefits when the beneficiary marries an individual who also is entitled to insurance benefits under the Act. 72 Stat. 1030.[4] Under Section 202(d)(5), the

[4] Several other secondary insurance benefits, in addition to child's insurance benefits, require as a condition of eligibility that the beneficiary be unmarried (or an unremarried widow, widower, or divorcee). See Sections 202(b)(1)(C) (divorced wives), 202(e)(1)(A) (widows), 202(f)(1)(A) (widowers), and 202(g)(1)(A) (surviving or divorced mothers). Generally speaking, those benefits are terminated when the beneficiary marries or remarries. See Sections 202(b)(1)(H), 202(e)(1), 202(f)(1), and 202(g)(1). See also Section 202(h)(1)(C) (parents). But see Sections 202(e)(4) and 202(f)(5). For each of these benefit categories, however, there is a limited exception in favor of beneficiaries who marry individuals who themselves are beneficiaries under the Act. In addition to the statutory provision involved in this case, Section 202(d)(5), see Sections 202(b)(3), 202(e)(3), 202(f)(4), 202(g)(3), and 202(h)(4).

child's insurance benefits of a disabled beneficiary are continued upon his marriage to a person entitled to old age, divorced wife's, widow's, widower's, mother's, or parent's insurance benefits, or to another disabled beneficiary of child's insurance benefits. This exception to the general rule that benefits terminate upon marriage is rational, and the Due Process Clause does not require that it be further extended to cover appellee's case.

The principal purpose of the 1958 amendments is explained in the legislative history (*e.g.*, H.R. Rep. No. 2288, 85th Cong., 2d Sess. 18 (1958)):

> When a secondary beneficiary marries, such person's benefit is terminated under present law. * * * [I]f the new spouse is also receiving a secondary benefit, the benefits of both are terminated and ordinarily neither beneficiary can become entitled to any new benefits. Your committee's bill would eliminate the hardship in these cases by providing that marriage would not terminate a benefit where a person receiving

> mother's, widow's, widower's, parent's or childhood disability benefits marries a person receiving any of these benefits * * *.

This explanation confirms what is apparent from the statutory language: in enacting a limited exception to the general eligibility bar, Congress was concerned only with the consequences under the Act of a marriage between two social security insurance beneficiaries. Congress reasonably determined that a marriage between individuals both receiving insurance benefits under the Act ordinarily would not result in the elimination of or reduction in their respective needs. Such individuals could reasonably be expected generally to have no substantial source of support beyond their insurance benefits and to be unable to work because of disability, age, or family responsibilities. Yet under the Act before 1958, marriage of these individuals to one another caused a simultaneous termination of secondary benefits. The 1958 amendments to the Act, including the provision in question here, were intended to eliminate this particular form of hardship.[8] The limited congressional objective was to cure what was perceived

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[8] Congress also provided in Section 202(d)(5) for the continuation of child's benefits when the disabled beneficiary marries a person receiving old-age or disability benefits. See also Section 202(g)(3) (mother's benefits). Since both spouses in such a marriage could be presumed to be dependent upon social security insurance benefits for support, Congress amended the Act to prevent the substantial reduction in benefits that would otherwise result from the marriage.

to be a defect in the internal workings of the insurance benefit provisions.

The rationale of the 1958 amendments does not extend to appellee's case. Since appellee did not marry another social security insurance beneficiary, his new family was not presumptively dependent upon primary or secondary insurance benefits for support. To the extent appellee in fact remained needy, his need was not occasioned by the limited circumstances that Congress sought to remedy.

Congress was not required to continue appellee's child's insurance benefits after marriage merely because it has chosen to continue certain other persons' benefits. In the areas of economic and social welfare legislation, Congress is constitutionally empowered to deal with a problem "one step at a time" and to address "the phase of the problem which seems most acute * * *." *Williamson* v. *Lee Optical Co.*, *supra*, 348 U.S. at 489. That is what Congress has done here. The 1958 amendments to the Act represent a "[g]overnmental decision[] to spend money to improve the general public welfare in one way and not another," and the question of the validity of such decisions is "not confided to the courts * * * unless the choice is clearly wrong, a display of arbitrary power, not an exercise in judgment.'" *Mathews v. de Castro*, *supra* (slip op. 4, quoting from *Helvering* v. *Davis*, 301 U.S. 619, 640).

Congress' choice in this regard was not arbitrary; there was a sound basis for its decision to limit the exception to the marriage bar to marriages between

social security insurance beneficiaries. The marriage between such beneficiaries presents a readily identifiable situation that Congress could easily treat within the Act's existing benefit structure. No substantial alteration of the insurance provisions or of the method of allocating insurance benefits was required in order to solve the particular problem presented by such marriages.

Other marriages, however, present a substantially different problem. Within the narrow frame of reference provided by the social security insurance program, there is no way to identify those marriages in which the beneficiary's need for support will continue. If Congress sought to identify and meet specific instances of continued need, it would be required to abandon the existing method of allocating benefits on the basis of broad and easily applied presumptions, in favor of an individualized means test similar to that used for the allocation of welfare benefits.[6]

Such a change would work a drastic alteration in the fundamental character of Title II, for until now

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[6] Alternatively, it could determine need by utilizing, for example, the presumption that a beneficiary's marriage to a welfare recipient affords no occasion for a termination of benefits. But such an approach would entail a far more detailed inquiry into continuing, month-by-month eligibility than is now necessary under the insurance benefits program. Moreover, even this would work an alteration in the fundamental character of Title II, which, "unlike the public assistance provisions, [is] not need based" (*Mathews* v. *de Castro, supra* (slip op. 5-6 n. 6)).

those provisions have "not purport[ed] to be general public assistance laws that simply pay money to those who need it most." *Mathews* v. *de Castro, supra* (slip op. 5). Congress has now enacted, in Title XVI of the Social Security Act, a supplemental security income program that allocates benefits on the basis of individualized determinations and thereby takes up the burden of providing federal assistance where Title II leaves off (see pp. 19-22, *supra*). The Constitution does not require that Title II itself be restructured along the lines of a general public assistance program. See, *e.g.*, *Mathews* v. *de Castro, supra; Mathews* v. *Lucas, supra; Weinberger* v. *Salfi, supra.*

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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